

obligation conflicts with the NRM Committee's expressed intent,^{43/} and with new rule Section 25.278.

The Commission has yet to offer any explanation whatsoever for the changes that it made to the NRM Committee's recommended rule. The Commission should, therefore, modify Section 25.203(k) to eliminate the misplaced references to "space stations."

IV. SERVICE RULES: Milestones

One aspect of the record in this proceeding that the Commission failed to address adequately in its R&O is TRW's call for milestones to be made more flexible once system implementation has commenced and a licensee has begun to offer service.^{44/} Although the Commission states that it is rejecting suggestions that it "consider granting extensions of time to a licensee that has launched part of its system,"^{45/} this statement does not fully address the very narrow exception that TRW proposes.

Specifically, due to the characteristics of Odyssey™, with its medium-Earth orbit design, TRW can operate a 1.6/2.4 GHz MSS system with fewer than 12 satellites that will comply with the domestic and global coverage requirements of the

^{43/} See NRM Committee Report at 37-38.

^{44/} See TRW Comments at 175-177.

^{45/} See R&O, FCC 94-261, slip op. at ¶ 189.

Commission's rules.^{46/} The additional satellites that will ultimately comprise Odyssey™ will permit greater system capacity and satellite redundancy, but are not immediately essential for operation of a substantially compliant 1.6/2.4 GHz MSS system. As a result, TRW believes that the Commission should permit the milestone schedules to be flexible enough to accommodate business plans that may be altered based on initial capacity needs. The Commission should therefore allow 1.6/2.4 GHz MSS licensees to request postponement of milestones if they are in substantial compliance with the technical qualifications of the FCC's rules with the satellites already in operation. Nonetheless, in order to promote the Commission's important objective of strictly enforcing its system completion requirements, the opportunity to postpone initial milestones should be limited to those circumstances where the licensee also recertifies its commitment to deploy the full constellation initially authorized.

In addition, and as a prudential and practical matter, 1.6/2.4 GHz MSS operators that report missed construction milestones should not have their authorizations rendered "null and void." This automatic penalty is inappropriate for the satellite industry, where uncertainties abound with respect to launch failures, delays in procurement, and other unforeseeable factors, and it is particularly draconian with respect to MSS licensees that employ newer, more innovative technologies and require a larger number of satellites to achieve global coverage.

For these reasons, a 1.6/2.4 GHz MSS licensee that misses a milestone should not forfeit its license by operation of law, but instead should be ordered to

^{46/} Conceivably, these coverage requirements can be satisfied with as few as six operational satellites.

show why its authorization should not be revoked. The Commission should adopt the reasonable approach TRW suggested in its initial comments -- an approach that would allow the Commission to maintain full control over licensees' diligence in constructing their systems, while simultaneously providing a licensee with the certainty of a clearly defined opportunity to demonstrate that a milestone was missed for reasons beyond its control.^{47/}

V. INTERNATIONAL ISSUES.

In its R&O, the Commission ignored the dangerous prospect that individual U.S. MSS licensees may seek or obtain exclusive assignments to the 1.6 GHz band segment or enter into other arrangements that would exclude other 1.6/2.4 GHz MSS systems from providing service in foreign countries.^{48/} The Commission therefore declined to impose any global band sharing restrictions that may "directly impact the ability of other countries to access these systems as they see fit, absent indications from these countries regarding their planned use of these frequency bands."^{49/} This passive approach jeopardizes the viability of a competitive U.S. 1.6/2.4 GHz MSS industry.

TRW urges the Commission to prohibit its 1.6/2.4 GHz MSS licensees from entering into any arrangement with any foreign entity or administration that

^{47/} See TRW Comments at 178-79.

^{48/} See Joint Proposal and Settlement Agreement, CC Docket No. 92-166, at § 7(e) (filed September 9, 1994).

^{49/} R&O, FCC 94-261, slip op. at ¶ 213.

would grant such licensees special concessions of any kind with respect to one another or that provide for exclusive market access. The failure to establish such a prohibition would guarantee interminable rounds of negotiations, disputes and litigation as 1.6/2.4 GHz MSS licensees vie for favor abroad, and as foreign entities and administrations seek to further their own interests by playing the licensees off one another to the ultimate detriment of U.S. ratepayers. It is possible that individual licensees would ultimately be deprived of meaningful access to many countries, and that their global satellite systems would thereby be rendered significantly less than global.^{50/}

The Commission has often expressed its concerns about special concessions with respect to both international satellite systems and other carriers.^{51/} There can also be no question but that the Commission has the authority to act on these concerns to impose limiting conditions on U.S. space station licensees, even when those conditions flow through to ultimate end users -- regardless of where those end users may be. As TRW noted in its Reply Comments,^{52/} the Commission has conditioned the licenses of all international separate satellite systems on the absolute

^{50/} See TRW Reply Comments at 58-60.

^{51/} See e.g., Orion Satellite Corporation, 5 FCC Rcd 4937, 4940 (1990) (stating that the sale of limited partnership interests in Orion to foreign entities might aid the Orion satellite system in gaining entry into foreign markets, and that such entry would be "in the public interest so long as no exclusive arrangements are developed to preclude the entry of other separate satellite operators.") (emphasis added); see also Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7335 (1992) ("International Common Carrier Services") (stating that "[w]e cannot rule out the possibility that an affiliated U.S. carrier will attempt to gain an unfair competitive advantage on affiliated or unaffiliated routes through the negotiation of exclusive arrangements with foreign carriers or administrations."); 47 C.F.R. § 63.14.

^{52/} TRW Reply Comments at 59 & n.90.

prohibition of any interconnection of the systems with the public switched telephone network.^{53/} The Commission applies this prohibition to associated ground station and service authorizations whether they are held by the separate satellite system operator, its customer or the ultimate user.^{54/}

The Commission must recognize that if 1.6/2.4 GHz MSS satellite systems obtain access to foreign markets on varying terms and conditions -- or worse, if individual systems are entirely frozen out of certain markets -- competition in global MSS will become a fiction. The robust MSS industry that the Commission envisions in its R&O simply will not come to be if individual MSS licensees can obtain strangleholds on foreign markets, and if foreign entities and administrations can use exclusive or preferential agreements to extract excessive charges from American consumers.^{55/}

^{53/} See International Separate Systems, 101 F.C.C.2d 1046, 1111 (1985) (subsequent history omitted).

^{54/} Id. The Commission stated that, for purposes of implementing its "no-interconnect" restriction, it obtained jurisdiction over enhanced service providers and end users seeking to interconnect a PBX or similar equipment with separate system facilities through "the full panoply of authority under Title III of the Communications Act of 1934 to license and condition the use of radio facilities and pursuant to the residual authority under Title I of the Act to ensure full effectuation of our statutory mandate." Id. at 1112 n.89. The Commission has taken similar actions affecting foreign entities and administrations in the Title II context, as TRW has already observed. See International Common Carrier Services, 7 FCC Rcd at 7335. See also Uniform Settlements Policy, 59 R.R.2d 982, 993 (1986). See footnote 58, infra.

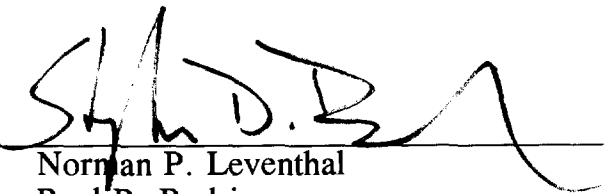
^{55/} Although the Commission rejected outright the call for globalization of its spectrum sharing plan, a determination TRW objects to on both legal and policy grounds, and failed to address the arguments put forth by TRW in its Comments and Reply Comments (see TRW Comments at 80-81; TRW Reply Comments at 58-62), TRW
(continued...)

VI. CONCLUSION

For all of the foregoing reasons, TRW respectfully requests that the Commission carefully review the issues raised herein and either reconsider or clarify its conclusions in the R&O as it proceeds with licensing.

Respectfully submitted,

TRW Inc.

By: 

Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch
David S. Keir
Walter P. Jacob

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

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Its Attorneys

^{55/}(...continued)

believes the Commission should at least adopt the type of caveat it included in its recent order granting the NVNG MSS application of Orbital Communications Corporation. See Orbital Communications Corp., FCC 94-268, slip op. at 7 (released October 27, 1994). There, the Commission, faced with the issue raised by TRW here, stated that if extension of a U.S.-based spectrum sharing plan was "the most appropriate response" to coordination issues involving U.S. licensees that arise outside U.S. borders, the Commission would consider extending its sharing plan.